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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,114	03/11/2004	Kenneth S. Bloom	18420 USA	7090

27081 7590 02/05/2007  
OWENS-ILLINOIS, INC.  
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PERRYSBURG, OH 43551-2999

EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/799,114

Applicant(s)

BLOOM ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election claims 1-12 drawn to the closure in the reply filed on November 20, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamath (US 5,320,234).

Disclosed is a tamper-indicating closure **10** that includes:

a base wall having a cylindrical skirt **12** for removably engaging a container finish,

a tamper band **24** frangibly connected to said skirt, and

a plurality of wings **28** extending inwardly from an inner surface of said tamper band for engaging a container finish,

said wings being flexibly resiliently connected to said inner surface of said band along lines that are disposed at a counterclockwise angle with respect to an axis of said skirt as viewed from inside said skirt.

The band is set forth as being 0.030 in thick. Therefore, the wings must be less than or equal to 0.030 in thick. Thus, meeting the limitation of claim 6.

The wings are set forth in Wilde et al. (US 4,418,828), which was incorporated by reference, to be angled 30° with respect to a vertical cap axis.

4. Claims 1,3,4,5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Przytulla et al. (US 5,915,579).

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Disclosed is a tamper-indicating package that includes:

a container **10** having a finish with at least one external thread segment **28** and a plurality of external ratchet teeth **36** spaced from said thread segment, and

a tamper-indicating closure **12** that includes:

a base wall having a skirt with at least one internal thread segment for engaging said external thread segment on said finish,

a tamper band **14** frangibly connected to said skirt, and

a plurality of wings **34** extending inwardly from an inner surface of said tamper band for engagement with said ratchet teeth on said finish,

said wings being resiliently flexibly connected to said inner surface of said band along lines that are disposed at a counterclockwise angle with respect to an axis of said skirt as viewed from inside said skirt.

With respect to claim 5, the wings appear to be angled 35° in figure 4.

5. Claims 1,3-5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ma (US 6,112,923).

As seen in figure 13, the wings **226** extend from an inner surface of the skirt **218** and are disposed at a counterclockwise angle with respect to an axis of the closure. The ratchet teeth of the container are seen in figure 16 to extend partially around the neck.

***Claim Rejections - 35 USC § 103***

6. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Przytulla.

Przytulla teaches a closure having angled projecting flexible wings on a tamper band, but is silent in the written specification regarding the preferred angle of the wings and the thickness of the wings.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wings at an angle of 30°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Doing so provides a tamper-indicating band expedient for tamper indication.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wings of a thickness in the range of 0.024 and 0.03 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Doing so provides a tamper-indicating band arrangement expedient for manufacturing and tamper indication.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma.

Ma teaches the claimed package except for the spacing of the wings being less than the angular spacing between the ratchet teeth, and preferably one-half the spacing.

Wherein Ma indicates the design of the container in figure 16 provides tamper indication with less manufacturing consideration, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the package with the wings having one-half the angular spacing of the ratchet teeth. Doing so allows for fewer ratchet teeth to allow the same level of tamper indication and saves on manufacturing costs.

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma in view of Curry (US 4,548,329).

Ma teaches at column 5, lines 18-22 that the ratchet teeth can extend partially or completely around the neck, but is silent regarding spacing the ratchet teeth in diametrically opposed groups.

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Curry teaches it is known to provide a container neck with two diametrically opposed groups of ratchet teeth.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of two diametrically opposed groups of ratchet teeth. Doing so provides a more symmetric arrangement of container ratchet teeth for uniform showing of tampering.

### ***Response to Arguments***

9. Applicant's arguments filed November 20, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the wings extend at a "negative" angle or are directly connected to the inner surface of the tamper evident band) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is to be noted the claims set forth "an axis", but does not specify where the axis is located with respect to any portion of the closure. Similarly, the direction of "viewing" is not specified in the claims. The wings of Kamath, Przytulla, and Ma are all seen to be connected to "lines that are disposed at a counterclockwise angle with respect to an axis of said skirt".

Viewing the embodiment illustrated in figures 13 and 14 of Ma, the wings (226) are resiliently connected to the inner surface of the skirt (via the hinge of the tamper band) along "lines that are disposed at a counterclockwise angle with respect to an axis of said skirt". Kamath illustrates the wings (28) to be counterclockwise in figure 1. Similarly, the wings (34) of Przytulla are disposed at a counterclockwise angle with respect to "an axis" of the closure. To

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the degree the limitations are set forth in the claims, the applied prior art anticipate and/or render the claims obvious as set forth in the rejections above.

It is noted that the common knowledge or well-known in the art statements are taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any

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amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

12. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)



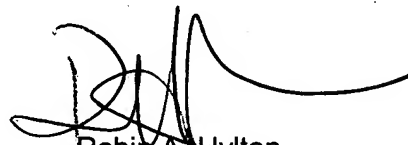
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at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
February 1, 2007



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GAU 3781